THE
Dan Smoot Report

Vol. 13, No. 29 (Broadcast 621) July 17, 1967 Dallas, Texas

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THE ILLEGAL FOURTEENTH

The Fourteenth Amendment[1] to the Constitution of the United States (proclaimed ratified in 1868) is the basis for contemporary court decisions and governmental practices which are shattering the foundations of our free society; yet, the amendment was never legally adopted.[2]

Throughout the War For Southern Independence (1861-1865), President Lincoln maintained that the American union was indivisible; that the war was being fought, *not* to abolish slavery, but to suppress rebellion which threatened to dismember the union; and that, once the rebellion was suppressed, the union of all states would exist exactly as before hostilities.

On December 8, 1863, Lincoln formally emphasized this doctrine by issuing a proclamation, promising amnesty (forgiveness) to people in the confederate states who would swear an oath of allegiance to the Constitution and to the union, and promise to obey laws and proclamations abolishing slavery. At that time, Charles Sumner of Massachusetts (radical leader in the Senate) and Thaddeus Stevens of Pennsylvania (radical leader in the House) wanted Lincoln to consider the southern states as territories or alien lands outside the union, so that they could be treated as conquered provinces if the north won the war.[3]

Lincoln carefully refused to do this. Inasmuch as the north won the war, Lincoln's point was proven: the southern states never did secede from the union: they merely tried to.

The day hostilities ended, therefore, the southern states were constitutionally entitled to their full representations and rights in the national Congress. The federal government could not legally lay down conditions for "readmitting" the southern states, because, according to the doctrine of Lincoln and the decision of war, they had never left the union.

On April 14, 1865, when Lincoln was assassinated, Congress was not in session. On May 29, President Andrew Johnson issued proclamations to carry out Lincoln's plans of amnesty and reconstruction. Johnson's proclamation set up a provisional government for North Carolina, appointing a governor to

THE DAN SMOOT REPORT is published weekly by The Dan Smoot Report, Inc., Box 9538, Dallas, Texas 75214 (office at 6441 Gaston Ave.). Subscriptions: $18.00 for 2 years; $10.00, 1 year; $6.00, 6 months; first class, $12.50 a year; airmail, $14.50. Dan Smoot was born in Missouri, reared in Texas. With BA and MA degrees from SMU (1938 and 1940), he joined the Harvard faculty (1941) as a Teaching Fellow, doing graduate work in American civilization. From 1942 to 1951, he was an FBI agent; from 1951 to 1955, a commentator on national radio and television. In 1955, he started his present independent, free-enterprise business: publishing this REPORT and abbreviating it each week for radio and TV broadcasts available for commercial sponsorship by business firms.

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call a convention chosen by the people of the state for the purpose of establishing a permanent state government. The persons qualified to vote for delegates to this convention were those who had been qualified to vote prior to the war — and who had taken the required oath of allegiance to the union.[3]

By July 13, 1865, President Johnson had applied this "Lincoln formula" for reconstruction to all remaining states in the confederacy. Before Congress convened in December, 1865, all confederate states (except Texas, which delayed until the spring of 1866) had thus established legitimate governments. And, *as states*, all (except Mississippi and Texas) had ratified the 13th Amendment, abolishing slavery.[4]

When Congress convened in December, 1865, the radicals in control refused to seat Representatives and Senators from the confederate states.

Thus, the Congress which convened in December, 1865, was an illegal Congress, because it denied representation from states constitutionally entitled to representation.

On April 9, 1866, the illegal Congress enacted the Civil Rights Bill (over President Johnson's veto). To place this measure beyond the danger of overthrow by the courts, or by a subsequent, legal Congress, the radical Congress incorporated essential provisions of the Civil Rights Bill in a Resolution proposing the Fourteenth Amendment.[5]

The Resolution proposing the Fourteenth Amendment passed the Senate on June 8, 1866, by a vote of 33 to 11, with 5 Senators not voting. On June 13, 1866, the House took a final vote on the Resolution: 120 Representatives for the proposal, 32 opposed, and 32 not voting.

This vote in the House did not meet the constitutional requirement that a Resolution proposing a constitutional amendment must be approved by two-thirds of both Houses. There were 184 Representatives in the illegal Congress on June 13, 1866.[6] Two-thirds of that number would have been 123. Only 120 voted for the Resolution proposing the Fourteenth Amendment.

Nonetheless, the leadership of Congress arbitrarily declared the Resolution enacted. Congress submitted the Fourteenth Amendment proposal to all states for ratification — including the confederate states which had been denied representation.

Tennessee was the only confederate state which voluntarily ratified the Fourteenth Amendment. The other ten confederate states (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia) rejected it. Four states outside the old confederacy also rejected the Amendment: California, Delaware, Kentucky, and Maryland. Iowa did not ratify the Fourteenth Amendment until April 3, 1868; and Massachusetts did not ratify until March 20, 1867.

Thus, by the first of March, 1867, only 21 states had ratified the proposed Fourteenth Amendment.[7] At least 28 states had to ratify, to meet the constitutional requirement that amendments must be approved by three-fourths of all states.

So, on March 2, 1867, Congress passed the Reconstruction Act, abolishing the governments in the ten confederate states which had rejected the Fourteenth Amendment. The Act placed these ten states under military dictatorship, requiring the commanding generals to prepare the rolls of voters for conventions to formulate governments acceptable to Congress.

Everyone who had served in the confederate armed forces was denied the right to vote or hold office — despite the presidential proclamation of amnesty. Virtually the only persons permitted to vote or to hold office were negroes, southern scalawags, and carpetbaggers from the north and from foreign countries.[3,4,6] The Reconstruction Act provided that when the legislatures of these "reconstruction" governments ratified the Fourteenth Amendment, the states would be admitted to the union.

In other words, the illegal Congress — for purposes of excluding Representatives and Senators from southern states — considered those states *out* of the union. For purposes of getting the Four-

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teenth Amendment ratified, the illegal Congress considered the southern states *in* the union and submitted the Fourteenth to them for ratification. When they refused to ratify, Congress abolished their governments and set up "reconstruction" governments, controlled by northern military power, again treating them as *out* of the union until they ratified the Fourteenth Amendment — although the Constitution clearly provides that only states already in the union can act on amendments, and gives Congress no authority to coerce action on amendments.

Congress denied the southern states judicial relief, by intimidating the Supreme Court into silence — threatening to abolish the Court's appellate jurisdiction, or to abolish the Court itself, by constitutional amendment.[8]

Army bayonets escorted illiterate negroes and white carpetbaggers to the polls, keeping most southern whites away. In Louisiana, an Army general even presided over the state legislature which "ratified" the Fourteenth Amendment.

By July 20, 1868, Iowa and Massachusetts had completed their ratifications of the Fourteenth Amendment, and the legislatures of 6 "reconstructed" confederate states (Alabama, Arkansas, Florida, Louisiana, North Carolina, South Carolina) had ratified. These 8 new ratifications, plus the 21 which had been completed before March, 1867, made a total of 29 state ratifications by July 20, 1868. But legislators of 2 northern states had changed their minds.

Their sense of decency outraged by the whole monstrous procedure, the legislators of New Jersey (on March 24, 1868) and of Ohio (on January 15, 1868) withdrew their former ratifications, and rejected the Fourteenth Amendment.

Hence, there were still not enough ratifications to adopt the Amendment. There had to be 28. There were only 27.

On July 20, 1868, Secretary of State William H. Seward proclaimed that three-fourths of the states *had* ratified the Fourteenth Amendment — *if* the legislatures which ratified in the six confederate states were *authentically organized*, and *if* New Jersey and Ohio were not allowed to reject the Amendment. The radical Congress did not like Secretary Seward's equivocation about legality.

On July 21, 1868, Congress passed a joint resolution declaring the Fourteenth Amendment a valid part of the Constitution and directing Seward to proclaim it as such. On July 28, 1868, Secretary Seward certified, without reservation, that the Amendment was a part of the Constitution.[3,5]

Freedom of the slave race was, ostensibly, the exclusive purpose of the framers of the Fourteenth Amendment. Yet, as soon as the Amendment was declared adopted, efforts were made to use it as a weapon to destroy states rights. Groups and individuals, who did not like certain local or state laws, brought cases in federal courts, claiming that the Fourteenth Amendment gave the federal government authority to supervise activities of state and local governments.

In 1873, the Supreme Court heard the first case testing this doctrine, and held that the Fourteenth Amendment did *not* authorize federal intervention in state and local affairs.

Those who wanted to transform our federal system into a centralized system (by transferring all rights of the states to the central government in Washington) kept badgering the Supreme Court for a decision that the Fourteenth Amendment *did* authorize the federal government to regulate and supervise state laws. The position of the Court on this point began to weaken at the turn of the century; and, by the 1930's, the Court had begun to assume jurisdiction, under the Fourteenth Amendment, to act as "censor upon . . . legislation of the states."[5]

But it was not until after Eisenhower appointed Earl Warren Chief Justice that the Court began to assume power, under the Fourteenth Amendment, to do *anything* desired by a majority of the nine justices.

Obviously, we need to eliminate the Fourteenth Amendment and all the fruits of it: get

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rid of the Amendment and nullify all court decisions, executive actions, administrative regulations, and laws based on it.

How? Technically, Congress, by simple legislative enactment, could proclaim the Amendment invalid because not legally ratified, and could declare null and void all official acts and decisions based on it. But this would be dangerous procedure. It could set a precedent which Congress might try to use in eliminating a *valid* amendment to the Constitution — thus creating even greater confusion.

Moreover, spurious constitutional doctrine, which the Fourteenth Amendment has already inspired, renders infeasible the remedy of simple legislative enactment. There is no possibility that the present Supreme Court — basing its usurpations of power on the Fourteenth Amendment — would uphold a congressional act abolishing the Amendment.

Congress could enact a Resolution proposing repeal of the Fourteenth Amendment; but this would be tacit recognition that the Amendment is now legal.

The only proper and feasible remedy appears to be a Resolution by Congress *re-submitting* the Fourteenth Amendment to all state legislatures for proper ratification or rejection.

In other words, this vital question should be resolved, not by some branch or agency of government, but by the people themselves, acting through their state legislatures by due constitutional process. If the people want the Fourteenth Amendment, and all that it has produced, they could persuade three-fourths of the state legislatures to ratify it legally.

I believe, however, that the people would demand that their state legislators reject it. Large numbers of Americans are beginning to realize that, unless the Fourteenth Amendment and all its progeny are abolished, we will not (no matter what else we may do) restore constitutional government in the United States.

SUGGESTION: Distribute copies of this *Report* to spread the word until there is insistent public demand for Congress to resubmit the Fourteenth Amendment.

FOOTNOTES

(1) Here is the full text of the Fourteenth Amendment:

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

(2) See David Lawrence Editorials, *U. S. News & World Report*, "Which 'Constitution'?", September 13, 1957, p. 128; "There Is No 'Fourteenth Amendment'!", September 27, 1957, pp. 139-140; "Illegality Breeds Illegality," October 4, 1957, pp. 143-4; "Illegality Breeds Illegality," October 8, 1962, pp. 123-4; "Lawlessness," October 22, 1962, pp. 107-8.

(3) *The Encyclopaedia Britannica*, Fourteenth Edition, Vol. 22, pp. 810 ff.

(4) *Andrew Johnson: A Study In Courage*, by Lloyd Paul Stryker, The MacMillan Company, New York, 1929, Chapter XXVI

(5) *The Constitution of the United States of America: Analysis and Interpretation: Annotations of Cases Decided By The Supreme Court Of The United States To June 30, 1952*, Legislative Reference Service of the Library of Congress, Senate Document No. 170, Government Printing Office, 1953, pp. 614-5, 749-59, 966-78

(6) *A Brochure On The 14th Amendment*, written and published by John B. Mason, 357 East Wood, Raymondville, Texas, 1956

(7) *The Fourteenth Amendment To The Constitution Of The United States, A Study*, written and published by Walter E. Long, P. O. Box 1, Austin, Texas, 1960

(8) "The Dubious Origin Of The Fourteenth Amendment," by Walter J. Suthon, Jr., *Tulane Law Review*, Vol. XVIII, New Orleans, Louisiana, December, 1953, pp. 22-44

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